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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/378,502	08/20/1999	F. READ MCFEELY	Y0999-198	9212

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[REDACTED] EXAMINER

CHEN, BRET P

ART UNIT	PAPER NUMBER
1762	//

DATE MAILED: 11/27/2001

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. <b>09/378,502</b>	Applicant(s) <b>Fenton Read McFeely et al.</b>
	Examiner <b>Bret Chen</b>	Art Unit <b>1762</b>

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1)  Responsive to communication(s) filed on Oct 22, 2001.
- 2a)  This action is FINAL.      2b)  This action is non-final.
- 3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

#### Disposition of Claims

- 4)  Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5)  Claim(s) \_\_\_\_\_ is/are allowed.
- 6)  Claim(s) 1-16 is/are rejected.
- 7)  Claim(s) \_\_\_\_\_ is/are objected to.
- 8)  Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9)  The specification is objected to by the Examiner.
- 10)  The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- 11)  The proposed drawing correction filed on \_\_\_\_\_ is: a)  approved b)  disapproved.
- 12)  The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. § 119

- 13)  Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

a)  All b)  Some\* c)  None of:

1.  Certified copies of the priority documents have been received.
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\*See the attached detailed Office action for a list of the certified copies not received.

- 14)  Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

#### Attachment(s)

- 15)  Notice of References Cited (PTO-892)      18)  Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 16)  Notice of Draftsperson's Patent Drawing Review (PTO-948)      19)  Notice of Informal Patent Application (PTO-152)
- 17)  Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_      20)  Other: \_\_\_\_\_

Art Unit: 1762

## **DETAILED ACTION**

Claims 1-16 are pending in this application. Amended claims 6, 10-12 are noted.

The amendment dated 10/22/01 has been entered and carefully considered. The examiner appreciates the amendments to the claims. In view of said amendments, the 112 rejection has been withdrawn.

### *Drawings*

1. Figure 1 should be designated by a legend such as --Prior Art-- because only that which is old is illustrated. See MPEP § 608.02(g). On p.1 lines 21-25, the applicant refers to Figure 1 as prior art but on p.9 refers to Figure 1 as the present invention. Clarification and any appropriate amendments are requested.

### *Claim Rejections - 35 USC § 103*

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 1-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kim (5,603,169) or Partus (6,161,398) for the reasons listed in the previous office action.**

Art Unit: 1762

***Response to Arguments***

3. Applicant's arguments filed 10/22/01 have been fully considered but they are not persuasive.

Applicant first argues that Kim fails to teach a liquid and/or the role of the liquid (p.6 first three paragraphs).

The examiner disagrees. It is first noted that the claimed invention requires adding a liquid into the apparatus, the liquid having a negligible vapor pressure compared to the solid precursor and that the solid is insoluble to the liquid. Kim specifically teaches a liquid precursor (col.1 line 32) and Partus teaches a bubbler containing a supply of liquid through which a carrier gas is bubbled (col.2 line 64 - col.3 line 8). Clearly a liquid is taught in the prior art references. It is not clear how the role of the liquid is any different from the claimed invention.

Applicant next argues that there is an unexpected benefit associated with the use of a insoluble solid (p.6 fourth full paragraph).

The examiner does not take issue with this. However, the prior art references do teach a solid which is insoluble to the liquid. Hence, any benefit associated with its use would be inherent in the absence of another critical feature.

Applicant next argues that there is no powdered precursor material in Partus (p.7 fourth paragraph).

The examiner notes that there is no recitation of same in the instant claims as presently written. Hence, applicant's arguments are not commensurate in scope with the instant claims.

Art Unit: 1762

Applicant's arguments have been considered but are not deemed persuasive. It is noted that paragraph ~~4~~<sup>5</sup> on p.7 does provide a unique feature. If the applicant were to amend the claims appropriately, the examiner will consider withdrawing the art rejections. It is noted that the examiner is willing to enter any amendment which places the case in condition for allowance regardless whether it raises new issues.

4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Art Unit: 1762

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bret Chen whose telephone number is (703) 308-3809. The examiner can normally be reached on Monday through Thursday from 6:30 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Shrive Beck, can be reached on (703) 308-2333. The fax phone number for this Group is (703) 872-9310. Amendment After Finals should be faxed to (703) 872-9311.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0661.

bc

November 13, 2001



BRET CHEN  
PRIMARY EXAMINER